

House Bill 3617

Sponsored by COMMITTEE ON ELECTIONS, ETHICS AND RULES (at the request of House Interim Committee on Human Services and Women's Wellness)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Creates Quality Care Fund. Continuously appropriates moneys in fund to Department of Human Services for purpose of providing technical assistance to specified care providers and ensuring that high standards for quality of care are met in accordance with rules adopted by department. Requires that moneys from certain fees and civil penalties be deposited in fund.

Requires department to create database of abuse records searchable on Internet. Requires that substantiated complaints of abuse in residential facilities and adult foster homes be entered into database. Requires written notification of availability of database to residents of those facilities and homes.

Authorizes department to establish licensing fees for specified facilities and adult foster homes.

Removes maximum and establishes minimum for specified civil penalties.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to care providers; creating new provisions; amending ORS 430.745, 430.757, 441.020, 441.745,
3 443.415, 443.425, 443.430, 443.455, 443.735, 443.740, 443.775 and 443.825; appropriating money; and
4 declaring an emergency.

5 **Be It Enacted by the People of the State of Oregon:**

6 **SECTION 1. The Quality Care Fund is established in the State Treasury, separate and**
7 **distinct from the General Fund. Interest earned by the Quality Care Fund shall be credited**
8 **to the Quality Care Fund. Moneys in the fund are continuously appropriated to the Depart-**
9 **ment of Human Services for the purpose of providing technical assistance and ensuring that**
10 **high standards for quality of care are met in accordance with rules adopted by the depart-**
11 **ment with respect to:**

12 (1) **A long term care facility as defined in ORS 442.015;**

13 (2) **A residential facility as defined in ORS 443.400, including but not limited to an assisted**
14 **living facility; and**

15 (3) **An adult foster home as defined in ORS 443.705.**

16 **SECTION 2. (1) The Department of Human Services shall create and maintain a database**
17 **containing all substantiated complaints of abuse that occur in a facility.**

18 (2) **The database must be available to the public through the Internet and must be**
19 **searchable by the name of the facility, the name of the adult foster home provider, the name**
20 **of the owner or agency operating the facility and the name of a facility employee found to**
21 **have committed abuse.**

22 (3) **Upon admission and at each subsequent case planning meeting, a facility must provide**
23 **written notice to the resident, the resident's case manager and the resident's guardian. The**
24 **notice must explain:**

25 (a) **How to access the database; and**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (b) How, when and where to report suspected abuse.

2 (4) As used in this section:

3 (a) "Abuse" has the meaning given that term in ORS 430.735.

4 (b) "Facility" means:

5 (A) A residential facility as defined in ORS 443.400, including but not limited to an as-
6 sisted living facility; or

7 (B) An adult foster home as defined in ORS 443.705.

8 **SECTION 3.** No later than August 1, 2008, a facility as defined in section 2 of this 2008
9 Act shall provide the notice described in section 2 (3) of this 2008 Act to all of the facility's
10 residents, the residents' case managers and the residents' guardians.

11 **SECTION 4.** The Department of Human Services shall report to each regular session of
12 the Legislative Assembly a schedule of all license fees established and all civil penalties im-
13 posed pursuant to ORS 441.020 (5), 441.995, 443.415, 443.425, 443.455, 443.735 and 443.775.

14 **SECTION 5.** ORS 430.745 is amended to read:

15 430.745. (1) Upon receipt of any report of alleged abuse of an adult, the Department of Human
16 Services or its designee shall investigate promptly to determine the nature and cause of the abuse.
17 If the department or its designee determines that a law enforcement agency is conducting an in-
18 vestigation of the same incident, the department or its designee need not conduct its own investi-
19 gation.

20 (2) The department or its designee may enter a facility and inspect and copy records of a facility
21 or community program if necessary for the completion of its investigation.

22 (3) In cases in which the department, its designee or the law enforcement agency conducting the
23 investigation finds reasonable cause to believe that an adult has died as a result of abuse, it shall
24 report that information to the appropriate medical examiner. The medical examiner shall complete
25 an investigation as required under ORS chapter 146 and report the findings to the department, its
26 designee or the law enforcement agency.

27 (4) Upon completion of an investigation conducted by a law enforcement agency, that agency
28 shall provide the department or its designee with a report of its findings and supporting evidence.

29 (5) If the department or its designee determines that there is reasonable cause to believe that
30 abuse occurred at a facility or that abuse was caused or aided by a person licensed by a licensing
31 agency to provide care or services:

32 (a) **The department** [, *it*] shall immediately notify each appropriate licensing agency and pro-
33 vide each licensing agency with a copy of [*its*] **the department's** investigative findings; and

34 (b) **The facility shall immediately provide written notice of the department's investigative**
35 **findings to the residents of the facility, the residents' case managers and the residents'**
36 **guardians.**

37 (6) Upon completion of the investigation, the department or its designee shall prepare written
38 findings which include recommended actions and a determination of whether protective services are
39 needed. Appropriate protective services shall be provided as necessary to prevent further abuse of
40 the adult. Any protective services provided shall be undertaken in a manner that is least intrusive
41 to the adult and provides for the greatest degree of independence that is available within existing
42 resources.

43 (7) **The application for employment at a facility must inquire whether the applicant has**
44 **been determined under subsection (5) of this section to have caused or aided abuse.**

45 **SECTION 6.** ORS 430.757 is amended to read:

1 430.757. (1) **The Department of Human Services shall maintain** a proper record of all reports
 2 of abuse made under ORS 430.743 and 430.765 (1) and (2) *[shall be maintained by the Department of*
 3 *Human Services]*.

4 (2) **The department shall include in the database established in section 2 of this 2008 Act**
 5 **all of the pertinent information from a report described in subsection (1) of this section that**
 6 **is not confidential under ORS 430.763.**

7 **SECTION 7.** ORS 441.020 is amended to read:

8 441.020. (1) Licenses for health care facilities including long term care facilities, as defined in
 9 ORS 442.015, shall be obtained from the Department of Human Services.

10 (2) Applications shall be upon such forms and shall contain such information as the department
 11 may reasonably require, which may include affirmative evidence of ability to comply with such
 12 reasonable standards and rules as may lawfully be prescribed under ORS 441.055.

13 (3) Each application shall be accompanied by the license fee. If the license is denied, the fee
 14 shall be refunded to the applicant. **Except as provided in subsection (13) of this section,** if the
 15 license is issued, the fee shall be paid into the State Treasury to the credit of the Department of
 16 Human Services Account for carrying out the functions under ORS 441.015 to 441.063 and 431.607
 17 to 431.619.

18 (4) Except as otherwise provided in subsection (5) of this section, for hospitals with:

- 19 (a) Fewer than 26 beds, the annual license fee shall be \$750.
- 20 (b) Twenty-six beds or more but fewer than 50 beds, the annual license fee shall be \$1,000.
- 21 (c) Fifty or more beds but fewer than 100 beds, the annual license fee shall be \$1,900.
- 22 (d) One hundred beds or more but fewer than 200 beds, the annual license fee shall be \$2,900.
- 23 (e) Two hundred or more beds, the annual license fee shall be \$3,400.

24 *[(5) For long term care facilities with:]*

- 25 *[(a) Fewer than 16 beds, the annual license fee shall be up to \$120.]*
- 26 *[(b) Sixteen beds or more but fewer than 50 beds, the annual license fee shall be up to \$175.]*
- 27 *[(c) Fifty beds or more but fewer than 100 beds, the annual license fee shall be up to \$350.]*
- 28 *[(d) One hundred beds or more but fewer than 200 beds, the annual license fee shall be up to*
 29 *\$450.]*
- 30 *[(e) Two hundred beds or more, the annual license fee shall be up to \$580.]*

31 **(5) The department shall establish by rule license fees for long term care facilities.**

32 (6) For special inpatient care facilities with:

- 33 (a) Fewer than 26 beds, the annual license fee shall be \$750.
- 34 (b) Twenty-six beds or more but fewer than 50 beds, the annual license fee shall be \$1,000.
- 35 (c) Fifty beds or more but fewer than 100 beds, the annual license fee shall be \$1,900.
- 36 (d) One hundred beds or more but fewer than 200 beds, the annual license fee shall be \$2,900.
- 37 (e) Two hundred beds or more, the annual license fee shall be \$3,400.

38 (7) For ambulatory surgical centers, the annual license fee shall be \$1,000.

39 (8) For birthing centers, the annual license fee shall be \$250.

40 (9) For outpatient renal dialysis facilities, the annual license fee shall be \$1,500.

41 (10) During the time the licenses remain in force holders *[thereof]* are not required to pay in-
 42 spection fees to any county, city or other municipality.

43 (11) Any health care facility license may be indorsed to permit operation at more than one lo-
 44 cation. *[In such case]* **If so,** the applicable license fee shall be the sum of the license fees which
 45 would be applicable if each location were separately licensed.

1 (12) Licenses for health maintenance organizations shall be obtained from the Director of the
 2 Department of Consumer and Business Services pursuant to ORS 731.072.

3 (13) **All moneys received pursuant to subsection (5) of this section shall be deposited in**
 4 **the Quality Care Fund established in section 1 of this 2008 Act.**

5 **SECTION 8.** ORS 441.745 is amended to read:

6 441.745. All penalties recovered under ORS 441.710 to 441.740 **and 441.995** shall be [*paid into the*
 7 *State Treasury and credited to the General Fund*] **deposited in the Quality Care Fund established**
 8 **in section 1 of this 2008 Act.**

9 **SECTION 9.** ORS 443.415 is amended to read:

10 443.415. (1) Applications for licensure to maintain and operate a residential facility shall be
 11 made to the Department of Human Services on forms provided for that purpose by the department.
 12 Each application shall be accompanied by a fee [*of \$60 for facilities defined in ORS 443.400 (5), (7)*
 13 *and (9) and a fee of \$30 for homes defined in ORS 443.400 (8) and (10)]* **to be established by the**
 14 **department by rule.** No fee is required of any governmentally operated residential facility.

15 (2) Upon receipt of an application and fee, the department shall conduct an investigation. The
 16 department shall issue a license to any applicant for operation of a residential facility in compliance
 17 with ORS 443.400 to 443.455 and the rules of the director. Licensure may be denied when a resi-
 18 dential facility is not in compliance with ORS 443.400 to 443.455 or the rules of the Director of
 19 Human Services. Licensure shall be denied if the State Fire Marshal or other authority has given
 20 notice of noncompliance of facilities defined in ORS 443.400 (5), (7) and (9) pursuant to ORS 479.220.

21 **SECTION 10.** ORS 443.425 is amended to read:

22 443.425. (1) Licensure under ORS 443.415 is effective for two years from the date of issue unless
 23 sooner revoked. Each license shall state the name of the person operating the residential facility;
 24 the name of the person who owns the facility; the address of the premises to which the license ap-
 25 plies and the maximum number of residents to be maintained in such residential facility at any time
 26 whether the residential facility is licensed as a residential training facility, a residential treatment
 27 facility, a residential care facility; a residential training home or residential treatment home and
 28 such other information as the Department of Human Services considers necessary.

29 (2) A license is renewable upon submission of an application to the department and payment of
 30 a fee [*of \$60 for facilities licensed under ORS 443.400 (5), (7) and (9) and a fee of \$30 for homes li-*
 31 *icensed under ORS 443.400 (8) and (10)]* **established by the department by rule.** No fee shall be
 32 required of a governmentally operated residential facility. Filing of an application for renewal before
 33 the date of expiration of a license extends the effective date of expiration of the license until the
 34 department has acted upon such application. The department shall refuse to renew a license if the
 35 facility is not substantially in compliance with all applicable laws and rules, or if the State Fire
 36 Marshal or the authorized representative thereof has given notice of noncompliance of facilities
 37 under ORS 443.400 (5), (7) and (9) pursuant to ORS 479.220.

38 **SECTION 11.** ORS 443.430 is amended to read:

39 443.430. (1) [*No*] **A** license under ORS 443.415 is **not** transferable or applicable to any location,
 40 residential facility or management other than that indicated on the application for licensure.

41 (2) All moneys collected under ORS 443.400 to 443.455 shall be deposited in [*a special account*
 42 *in the General Fund, and are appropriated continuously for payment of expenses incurred by the De-*
 43 *partment of Human Services in the administration of ORS 443.400 to 443.455]* **the Quality Care Fund**
 44 **established in section 1 of this 2008 Act.**

45 **SECTION 12.** ORS 443.455 is amended to read:

1 443.455. (1) For purposes of imposing civil penalties, residential facilities approved under ORS
 2 443.400 to 443.455 [*are considered to be long-term care facilities,*] **shall be** subject to ORS 441.705 to
 3 441.745. [*However,*] The [*Director*] **Department** of Human Services shall exercise the powers con-
 4 ferred under ORS 441.705 to 441.745.

5 (2) The [*director*] **department** shall by rule prescribe a schedule of penalties appropriate to
 6 residential facilities licensed under ORS 443.400 to 443.455. **If the department determines that**
 7 **there is reasonable cause to believe that abuse occurred at a residential facility and if the**
 8 **abuse resulted in the death, serious injury, rape, sexual abuse or sexual exploitation of a**
 9 **resident, the department shall impose a civil penalty of not less than \$_____ for each vio-**
 10 **lation. The department shall by rule define “serious injury,” “rape,” “sexual abuse” and**
 11 **“sexual exploitation” for purposes of this subsection.**

12 **SECTION 13.** ORS 443.735 is amended to read:

13 443.735. (1) Applications for a license to maintain and operate an adult foster home shall be
 14 made on forms provided by the Department of Human Services. Each application shall be accompa-
 15 nied by a fee [*of \$20 per bed requested for licensing*] **established by the department by rule.**

16 (2) Upon receipt of an application and fee, the department shall conduct an investigation.

17 (3) The department shall not issue an initial license unless:

18 (a) The applicant and adult foster home are in compliance with ORS 443.705 to 443.825 and the
 19 rules of the department;

20 (b) The department has completed an inspection of the adult foster home;

21 (c) The department has completed a criminal records check under ORS 181.534 on the applicant
 22 and any person, other than a resident, 16 years of age or older who will be residing in the adult
 23 foster home. The criminal records check shall be conducted in accordance with rules adopted under
 24 ORS 181.534;

25 (d) The department has checked the record of sanctions available, including the list of nursing
 26 assistants who have been found responsible for abuse and whose names have been added to the
 27 registry under ORS 441.678; and

28 (e) The applicant has demonstrated to the department the financial ability and resources nec-
 29 cessary to operate the adult foster home. The department shall adopt rules as the department deems
 30 appropriate that establish the financial standards an applicant must meet to qualify for issuance of
 31 a license and that protect financial information from public disclosure. The demonstration of finan-
 32 cial ability under this paragraph shall include, but need not be limited to, providing the department
 33 with a list of any unsatisfied judgments, pending litigation and unpaid taxes and notifying the de-
 34 partment regarding whether the applicant is in bankruptcy. If the applicant is unable to demonstrate
 35 the financial ability and resources required by this paragraph, the department may require the ap-
 36 plicant to furnish a financial guarantee as a condition of initial licensure.

37 (4) The department may not renew a license under this section unless:

38 (a) The applicant and the adult foster home are in compliance with ORS 443.705 to 443.825 and
 39 the rules of the department;

40 (b) The department has completed an inspection of the adult foster home;

41 (c) The department has completed a criminal records check under ORS 181.534 on the applicant
 42 and any person, other than a resident, 16 years of age or older who will be residing in the adult
 43 foster home. The criminal records check under this paragraph shall be conducted in accordance with
 44 rules adopted under ORS 181.534; and

45 (d) The department has checked the record of sanctions available, including the list of nursing

1 assistants who have been found responsible for abuse and whose names have been added to the
2 registry under ORS 441.678.

3 (5)(a) In seeking an initial license and renewal of a license when an adult foster home has been
4 licensed for less than 24 months, the burden of proof shall be upon the provider and the adult foster
5 home to establish compliance with ORS 443.705 to 443.825 and the rules of the department.

6 (b) In proceedings for renewal of a license when an adult foster home has been licensed for at
7 least 24 continuous months, the burden of proof shall be upon the department to establish noncom-
8 pliance with ORS 443.705 to 443.825 and the rules of the department.

9 (6)(a) Persons who have been convicted of one or more crimes that, as determined by rules of
10 the department, are substantially related to the qualifications, functions or duties of a provider,
11 resident manager, substitute caregiver or other household member of an adult foster home shall be
12 prohibited from operating, working in or residing in an adult foster home.

13 (b) The department shall adopt rules that distinguish the criminal convictions and types of abuse
14 that permanently prohibit a person from operating, working in or living in an adult foster home from
15 the convictions and types of abuse that do not permanently prohibit the person from operating,
16 working in or living in an adult foster home.

17 (c) A provider may not hire, retain in employment or allow to live in an adult foster home, other
18 than as a resident, any person who the provider knows has been convicted of a disqualifying crime
19 or has been found responsible for a disqualifying type of abuse.

20 (7) A license under ORS 443.725 is effective for one year from the date of issue unless sooner
21 revoked. Each license shall state the name of the resident manager of the adult foster home, the
22 names of all providers who own the adult foster home, the address of the premises to which the li-
23 cense applies, the maximum number of residents and the classification of the home. If, during the
24 period covered by the license, a resident manager changes, the provider must within 15 days request
25 modification of the license. The request must be accompanied by a fee of \$10.

26 (8) No license under ORS 443.725 is transferable or applicable to any location, persons operating
27 the adult foster home or the person owning the adult foster home other than that indicated on the
28 application for licensing.

29 (9) The department shall not issue a license to operate an additional adult foster home to a
30 provider unless the provider has demonstrated the qualifications and capacity to operate the pro-
31 vider's existing licensed home or homes and has demonstrated the ability to provide care to the
32 residents of those homes that is adequate and substantially free from abuse and neglect.

33 (10) All moneys collected under ORS 443.725 to 443.780 shall be deposited in *[a special account*
34 *in the General Fund, and are appropriated continuously for payment of expenses incurred by the De-*
35 *partment of Human Services]* **the Quality Care Fund established in section 1 of this 2008 Act.**

36 (11) Notwithstanding any other provision of this section or ORS 443.725 or 443.738, the depart-
37 ment may issue a 60-day provisional license to a qualified person if the department determines that
38 an emergency situation exists after being notified that the licensed provider of an adult foster home
39 is no longer overseeing operation of the adult foster home.

40 **SECTION 14.** ORS 443.740 is amended to read:

41 443.740. (1) The Department of Human Services shall maintain current information on all li-
42 censed adult foster homes and shall make that information available to prospective residents and
43 other interested members of the public at local department offices or area agencies on aging li-
44 censing offices throughout the state.

45 (2) The information shall include:

- 1 (a) The location of the adult foster home;
- 2 (b) A brief description of the physical characteristics of the home;
- 3 (c) The name and mailing address of the provider;
- 4 (d) The license classification of the home and the date the provider was first licensed to operate
- 5 that home;
- 6 (e) The date of the last inspection, the name and telephone number of the office that performed
- 7 the inspection and a summary of the findings;
- 8 (f) Copies of all complaint investigations involving the home, together with the findings of the
- 9 department, the actions taken by the department and the outcome of the complaint investigation;
- 10 (g) An explanation of the terms used in the investigation report;
- 11 (h) Any license conditions, suspensions, denials, revocations, civil penalties, exceptions or other
- 12 actions taken by the department involving the home; and
- 13 (i) Whether care is provided primarily by the licensed provider, a resident manager or other
- 14 arrangement.

15 (3) Any list of adult foster homes maintained or distributed by the department or a local li-
16 censing office shall include notification to the reader of the availability of public records concerning
17 the homes, **including but not limited to the database described in section 2 of this 2008 Act.**

18 **SECTION 15.** ORS 443.775 is amended to read:

19 443.775. (1) The Department of Human Services shall adopt rules governing adult foster homes
20 and the level of care provided in such homes, including the provision of care to more than one
21 person with nursing care needs under specified conditions and department approval, such as are
22 necessary to protect the health, safety or welfare of the residents and to provide for an appropriate
23 continuum of care, but shall not be inconsistent with the residential nature of the living accommo-
24 dations and the family atmosphere of the home. The rules shall be consistent with rules adopted by
25 the Oregon State Board of Nursing under ORS 678.150 (9).

26 (a) An exception to the limit of one resident with nursing care needs may be granted if the
27 provider proves to the department by clear and convincing evidence that such an exception will not
28 jeopardize the care, health, safety or welfare of the residents and that the provider is capable of
29 meeting the additional care needs of the new resident.

30 (b) The department, and the counties acting under the exemption granted pursuant to ORS
31 443.780, shall report on a quarterly basis to the Legislative Assembly on the number of exceptions
32 granted during the quarter pursuant to paragraph (a) of this subsection.

33 (2) The provider may not employ a resident manager who does not meet the classification
34 standard for the adult foster home.

35 (3) The provider shall be able to meet the night care needs of a resident before admitting the
36 resident. The provider shall include night care needs in the resident's care plan.

37 (4) The provider shall screen a prospective resident before admitting the resident. The screening
38 shall include but is not limited to diagnosis, medications, personal care needs, nursing care needs,
39 night care needs, nutritional needs, activities and lifestyle preferences. A copy of the screening shall
40 be given to the prospective resident or the prospective resident's representative.

41 (5) The department shall make rules to *[assure]* **ensure** that any employee who makes a com-
42 plaint pursuant to ORS 443.755 shall be protected from retaliation.

43 (6) For adult foster homes in which clients reside for whom the department pays for care, in-
44 cluding homes in which the provider and the resident are related, the department may require sub-
45 stantial compliance with its rules relating to standards for care of the client as a condition for

1 paying for care.

2 (7) By order the Director of Human Services may delegate authority under this section to per-
 3 sonnel other than of the department.

4 (8) The department may commence a suit in equity to enjoin maintenance of an adult foster
 5 home if:

6 (a) The home is operated without a valid license under this section; or

7 (b) After the license to maintain the home is ordered suspended or revoked, a reasonable time
 8 for placement of residents in other facilities has been allowed but such placement has not been ac-
 9 complished.

10 (9) The department shall establish by rule the maximum capacity of adult foster homes, including
 11 all nonrelated and related persons receiving residential care and day care.

12 (10) Any person who violates a provision of ORS 443.705 to 443.825 or the rules adopted there-
 13 under may be subjected to the imposition of a civil penalty, to be fixed by the [*director*] **department**
 14 by rule. [*not to exceed \$100 per violation, to a maximum of \$250 or, per occurrence of substantiated*
 15 *abuse, a maximum of \$1,000.*] **If the department determines that there is reasonable cause to**
 16 **believe that abuse occurred in an adult foster home and if the abuse resulted in the death,**
 17 **serious injury, rape, sexual abuse or sexual exploitation of a resident, the department shall**
 18 **impose a civil penalty of not less than \$_____ for each violation. The department shall by**
 19 **rule define “serious injury,” “rape,” “sexual abuse” and “sexual exploitation” for purposes**
 20 **of this subsection.**

21 (11) **All penalties recovered pursuant to this section shall be deposited in the Quality Care**
 22 **Fund established in section 1 of this 2008 Act.**

23 **SECTION 16.** ORS 443.825 is amended to read:

24 443.825. All penalties recovered under ORS 443.790 to 443.815 shall be [*paid into the State*
 25 *Treasury and credited to the General Fund and are available for general governmental expenses*] **de-**
 26 **posited in the Quality Care Fund established in section 1 of this 2008 Act.**

27 **SECTION 17.** Except as provided in section 18 of this 2008 Act, sections 1 to 4 of this 2008
 28 Act and the amendments to statutes by sections 5 to 16 of this 2008 Act become operative
 29 on July 1, 2008.

30 **SECTION 18.** The Director of Human Services may take any action before the operative
 31 date specified in section 17 of this 2008 Act that is necessary to enable the Department of
 32 Human Services to carry out, on and after the operative date specified in section 17 of this
 33 2008 Act, the provisions of sections 1 to 4 of this 2008 Act and the amendments to statutes
 34 by sections 5 to 16 of this 2008 Act.

35 **SECTION 19.** This 2008 Act being necessary for the immediate preservation of the public
 36 peace, health and safety, an emergency is declared to exist, and this 2008 Act takes effect
 37 on its passage.